

FILED & ENTERED

NOV 13 2015

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY Gonzalez DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SAN FERNANDO VALLEY DIVISION**

In re:

Avram Moshe Perry

Debtor(s).

Avram Moshe Perry

Plaintiff(s),

v.

Chase Auto Finance, Does 1-100,  
JPMorgan Chase Bank, N.A., Key Auto  
Recovery

Defendant(s).

CHAPTER 7

Case No.: 1:09-bk-11476-GM

Adv No: 1:10-ap-01043-GM

**MEMORANDUM OF DECISION GRANTING  
MOTION FOR SUMMARY JUDGMENT AS  
TO CHASE AUTO FINANCE (Dkt. 293)**

Date: October 20, 2015

Time: 10:00 a.m.

Courtroom: 303

Chase brings this motion for summary judgment. The sole remaining cause of action is for failure to turn over the vehicle that was repossessed prepetition, both under 11 U.S.C. §542(a) and §362. The motion was heard on October 20, 2015. In

1 preparation for the hearing, the Court created a chronology and sent it out to the parties  
2 for their comments. At the hearing the Court went over the comments and created an  
3 agreed-to version of the chronology, which, with some later refinements by the Court, is  
4 attached below. It then determined that it would rule on the papers and continued this to  
5 December 8, 2015 as a holding date.  
6

7 The chronology gives a general picture of the events upon which this complaint is  
8 based and also points out some disputed facts. It also creates an evidentiary base for  
9 determining this motion.  
10  
11

### 12 **THE FACTS**

13 The Court finds that the facts set forth below in normal typeface are no longer in  
14 dispute, while facts in dispute and/or without evidentiary support are in italics:<sup>1</sup>

- 15 1. On or before 2002, Plaintiff Avram Moshe Perry ("Perry") leased a 2002  
16 Nissan Pathfinder, VIN No. JN8DR09X41W562980 ("Vehicle") to which  
17 Chase Manhattan Auto Finance Corp. ("Chase Auto") was the lessor and  
18 title owner.  
19
- 20 2. During 2002 and 2003 there were already some problems with the payments  
21 under this lease: Chase Auto apparently initially misapplied at least one of  
22 them and maybe more.  
23
- 24 3. On or about August 7, 2004, Perry bought out the vehicle lease by  
25 financing the purchase through Chase Manhattan Bank USA, N.A., which  
26 would subsequently become JP Morgan Chase Bank, N.A., a defendant  
27 herein ("Chase"). Perry executed and delivered to Chase a written  
28

---

<sup>1</sup> The documents relevant to these facts are cited and more specifically identified in the attached chronology.

1 Promissory Note and Security Agreement ("Contract"). The Contract  
2 provides that Perry would pay to Chase the principal sum of \$19,446.10 at  
3 an initial interest rate of 6.50%, commencing on or about September 21,  
4 2004, and continuing until August 21, 2009 when the Contract was  
5 scheduled to mature.  
6

7 4. In the Contract, a paragraph entitled "Security Interest" provides that  
8 Perry is "granting [Chase] a security interest in the vehicle being purchased,"  
9 the vehicle being the 2001 Nissan Pathfinder.

10 5. In the Contract, a paragraph entitled "Default" provides that Perry is in  
11 default under the Contract, among other things, if he fails "to pay any  
12 payment within 10 days of its due date." This paragraph provides as one of  
13 the remedies available to Chase upon Perry's default that Chase can "take  
14 immediate possession of the vehicle (repossess the vehicle) with or without  
15 legal process." A paragraph entitled "Sale of Repossessed Vehicle" also  
16 provides that after Chase takes possession of the Vehicle, Chase may sell  
17 the Vehicle and "[i]f [Perry] owe[s] more than the net proceeds of sale, to the  
18 extent allowed by law [Perry] will pay [Chase] the difference between the  
19 net proceeds of sale and what [Perry] owe[s] when [Chase] ask[s] for it."  
20 (Since Perry has received a discharge, it is not relevant to this case whether  
21 there was a deficiency.)  
22

23 6. On August 18 and 19, 2004, Chase Auto signed the certificate of title for the  
24 Vehicle, both to transfer registered ownership of the Vehicle to Perry and to  
25 release its lien on the Vehicle, reflecting the fact that the lease had been paid  
26 off and Perry thus became the legal owner. *Perry filed copies of this*  
27  
28

1 *certificate with the Court, but the location of the original is not clear. There is*  
2 *no evidence that Chase deposited the certificate of title - endorsed to show its*  
3 *security interest in the Vehicle - with the Department of Motor Vehicles, as*  
4 *required by Cal. Vehicle Code §6300 et seq. to perfect Chase's lien on the car.*

5  
6 7. Chase Auto also executed California DMV Form 227 with respect to the Vehicle  
7 in order to (i) transfer registered ownership to Perry and release Chase Auto's  
8 lien and (ii) have either duplicate paper title or paperless title issued. *(It is not*  
9 *clear which type of title, as the appropriate box was not checked.)* Chase Auto  
10 certified that the certificate of title for the Vehicle had been lost. This Form 227  
11 was dated August 19, 2004, although it was notarized on February 22, 2005. *(It*  
12 *is not clear whether Chase's new lien was noted on this form, as the back of the*  
13 *form where it would have been indicated was not submitted to the Court.)*

14  
15 8. Chase has submitted a copy of a DMV record indicating that electronic title for  
16 the Vehicle - with Perry as the registered owner and Chase as the lienholder –  
17 was issued on March 7, 2005. *(This record has not been authenticated, but it*  
18 *suggests that the paper title was lost and that the DMV Form 227 described*  
19 *above was executed February 2005 in order to have paperless title issued.)*

20  
21 9. Between 2004 and 2008, there were various issues under the Contract  
22 concerning payments made or alleged by Perry to have been made. It is  
23 clear that Chase had some incorrect bookkeeping. *It is disputed as to*  
24 *whether Perry made all of his payments in a timely fashion.*

25  
26 10. Chase's records indicate that on or about May 16, 2008, Chase sent Perry  
27 a document entitled "Account Rewrite Agreement" memorializing an oral  
28 agreement whereby Perry and Chase agreed that the monthly payment

1 amount would be reduced to \$252.08 starting June 10, 2008. Perry asserts  
2 that he never signed the Account Rewrite Agreement and, in fact, that *he kept*  
3 *demanding that one be sent but that it never was*. However, he subsequently  
4 made several monthly payments of \$252.08.  
5

6 11. Chase's payment history shows Perry making five payments of \$252.08  
7 during the eight month period from June 10, 2008 to February 10, 2009.  
8 Perry made \$252.08 payments in December 2008 and January 2009, but  
9 Chase's payment history reflects that those payments were applied to  
10 payments due for September and October 2008. Thus, under Chase's  
11 records, this left payments due for November and December 2008 and  
12 January 2009.  
13

14 12. On January 30, 2009, Chase decided to repossess the car and contracted  
15 with Key Auto Recovery ("Key") to have Key recover the car for the  
16 benefit of Chase. The repossession order states that as of January 30, 2009  
17 the balance on the account was \$8,819.37 and the past due amount was  
18 \$756.24.  
19

20 13. On February 6, 2009, Key repossessed the car from Perry's apartment  
21 building.  
22

23 14. On February 10, 2009, Chase requested paper title for the Vehicle, thus  
24 closing the Vehicle's electronic title on file with the DMV.  
25

26 15. On February 11, 2009, Perry filed his chapter 7 bankruptcy case (1:09-bk-11476-  
27 GM; the "Bankruptcy Case"). Perry did not claim the car as exempt in Schedule  
28 C, but he did file a statement of intent (Official Bankruptcy Form 8) with the

1 petition and schedules. In this statement of intent, he indicated his intent to  
2 redeem the Vehicle and stated that the Vehicle "is claimed as exempt."

3 16. That same day, prior to the notice of bankruptcy, Chase's records indicate that it  
4 sent Perry a notice of intent to dispose of the repossessed vehicle. *Perry asserts*  
5 *that he never received this.*  
6

7 17. Chase was listed as a creditor in the filing matrix and was given notice of the  
8 bankruptcy through the Bankruptcy Noticing Center. Perry also sent a  
9 notice of bankruptcy directly to Chase on February 12, 2009. No later  
10 than February 13, 2009, Chase was aware of the bankruptcy.  
11

12 18. On February 12, 2009, Perry sent a letter to Key Auto Recovery detailing the  
13 repossession and threatening criminal penalties.

14 19. On February 13, Chase placed a "bankruptcy hold" on Perry's account *and*  
15 *appears to have downloaded a summary of the Vehicle's electronic title account*  
16 *from the DMV, which showed that Chase was the lienholder and that the*  
17 *electronic title account had closed February 10, 2009 due to a request for a*  
18 *paper title.*  
19

20 20. A few days later, Perry filed a complaint against Chase in the Los Angeles  
21 Superior Court.

22 21. On February 23, Chase noted Perry's chapter 7 in its internal, written notes.  
23 Chase's notes for February 24 and 25, show that Chase was still  
24 attempting to route a copy of title and the Contract to the appropriate  
25 department at the bank.  
26

27 22. On February 25, 2009, Perry filed "Plaintiff [sic] Opposition to Chase Bank  
28 Motion to Lift Stay, Request from the United States District Court for a

1 Preliminary and/or Permanent Injunction and/or Injunctive Relief under 28 U.S.C.  
2 §2283, Money Damages." [BK dkt. 14.] Although apparently directed to the  
3 District Court, this document was filed in the Bankruptcy Court. No motion to lift  
4 stay had yet been filed and none is discussed in the body of this document. Perry  
5 was seeking return of the car, an injunction to cease further action against him,  
6 and damages. At an April 9 hearing, the Court denied the injunction, etc.

7  
8 23. On March 9, 2009 Perry filed a motion to show cause, for shortened time, and for  
9 sanctions against Chase and Key for violation of the automatic stay, which  
10 Chase opposed. [BK dkt. 17, 18.] That motion was denied by the Court at the  
11 April 9 hearing.

12  
13 24. On March 10, 2009, Chase filed a motion for relief from the automatic  
14 stay. [BK dkt. 15.] This was served on Perry by mail on March 10. Chase  
15 was still in possession of the car *either directly or through Key*.

16 25. Chase set the hearing on its motion for relief from stay for April 9, 2009.

17 26. Between March 10 and April 9, Judge Mund had self-calendaring hearing  
18 dates for motions for relief from stay available on March 12, 19, 26 and  
19 April 2, 2009.

20  
21 27. On April 9, 2009, this Court granted Chase's motion for relief from stay,  
22 entering its order on April 23. [BK dkt. 22, 29.]

23 28. On April 14, 2009, Perry filed an appeal and sought a stay pending appeal of  
24 enforcement of the order granting relief from stay, which was denied. [BK dkt. 25,  
25 26, 28.]

26  
27 29. On April 30, 2009, Chase sold the car.  
28

1 30. The BAP dismissed Perry's appeal as moot and affirmed the bankruptcy court's  
2 order to abstain from hearing Perry's state law action for wrongful repossession.  
3 [BAP case 09-1135, dkt. 28] This was affirmed by the Ninth Circuit. [09-60052,  
4 dkt. 25-1.]  
5  
6

## 7 **MOVING AND RESPONDING PAPERS**

### 8 **The Motion**

9 Perry did not file this adversary proceeding until February 2010, some ten  
10 months after the car was sold. Therefore, the equitable doctrine of laches should bar his  
11 claim for violation of §542. Further because the value to the bankruptcy estate is little or  
12 nothing, §542 is not applicable. Perry scheduled the value of the car at \$9,000 and the  
13 amount of the Chase claim at \$9,000. Therefore the trustee really could not use, sell, or  
14 lease this car.  
15

16 Chase then argues that it moved expeditiously for relief from stay, filing its motion  
17 just 27 days after the bankruptcy was filed. It had rights in the vehicle that were superior  
18 to those of Perry, who only had the right to redeem the car. *In re Fitch*, 217 B.R. 286  
19 (Bankr. S.D. CA 1998). Perry never tendered the funds to redeem and there is no  
20 showing that he was capable of doing so.  
21

22 *Fitch* also held that the creditor could retain possession of the car pending the  
23 outcome of the motion for relief from stay. A creditor's refusal to immediately turn over  
24 the vehicle to the debtor is not a violation of the stay and thus not a violation of §542.  
25

26 Chase acted expeditiously to file its motion for relief from stay. Further, Chase  
27 was maintaining and continuing perfection of its possessory lien rights under the  
28 contract that it had with Perry and this cannot be a violation of the stay under



1 §362(b)(3).

2  
3 **The Opposition**

4 On September 29 Perry filed his opposition, composed of four documents: an  
5 opposition to the motion (which is also in the form of a declaration), a request for judicial  
6 notice, a proposed statement of uncontroverted facts and conclusions of law, and a  
7 memorandum in support of a motion to strike the declaration of Attorney Jeff Allsop  
8 because it is not on personal knowledge and thus it is not admissible.

9  
10 As a matter of law, the non-moving party need not put forth any evidence until  
11 the moving party has shown by admissible evidence that it would be entitled to  
12 judgment in its favor. *Celotex v. Catrett*, 477 U.S. 317, 324 (1986). The opposing party  
13 can use hearsay evidence if the out-of-court declarant could later present the evidence  
14 in a form that would be admissible at trial. *J.F. Feeser, Inc, v. Serv-A-Portion, Inc.*, 909  
15 F.2d 1524, 1542 (3d Cir. 1990).

16  
17 As to the timing of the redemption issue, the defendants did not serve Perry with  
18 any such redemption papers until he obtained them through the State Court discovery  
19 process.

20  
21 As to when the adversary proceeding was filed, an adversary proceeding is not  
22 necessary for the Debtor to obtain damages for a stay violation. It can also be by motion  
23 as a contested matter under Fed. R. Bankr. P. 9014.

24 The relief from stay motion was based on a bogus "Title Custody," "Electronic  
25 Title Request." Under the terms of the promissory note, the "rewrite agreement" was not  
26 effective because it was not signed by both parties. Thus, it is appropriate to reconsider  
27 the correctness and merits of the original order for relief from stay under Fed. R. Bankr.  
28

1 P. 9023.

2 The only way that Chase could perfect its lien was through possession because  
3 the "rewrite agreement" did not become effective. Thus, Chase was required to return  
4 the car - although it could request adequate protection. But if the Debtor does not agree  
5 to the adequate protection, the burden is on the creditor to request a hearing, though  
6 the burden is on the Debtor to prove that the creditor's rights will be adequately  
7 protected. To avoid turnover of the car due to lack of adequate protection, the creditor  
8 can request an emergency hearing under §362(f). *Expeditors Int'l of Wash. v. Colortran*  
9 (*In re Colortran*), 210 B.R. 823, 827-28 (9th Cir. BAP 1997), *aff'd in part and vacated in*  
10 *part on other grounds*, 165 F.3d 35 (9th Cir. 1999).

11  
12 Chase and Key had an affirmative duty to terminate possession of the vehicle  
13 when they learned of the bankruptcy case. Since this was exempt property, turnover to  
14 the Debtor was appropriate. *Mwangi v. Wells Fargo Bank (In re Mwangi)*, 432 B.R. 812,  
15 823 (B.A.P. 9<sup>th</sup> Cir. 2010). Perry had continuing rights in the car.

16  
17 Perry's exemption rights were automatic and he did not have to make a claim. It  
18 was the duty of the possessor to return the property - not of the Debtor to pursue its  
19 return. *California Empl. Dev. Dep't v. Taxel (In re Del Mission)*, 98 F.3d 1147, 1151 (9<sup>th</sup>  
20 Cir. 1996). Even if the creditor did not intend to violate the stay, once it knows of the  
21 stay, it bears the risk of all intentional acts that do violate the stay. *Assoc. Credit Servs.*  
22 *v. Champion (In re Champion)*, 294 B.R. 313, 318 (B.A.P. 9th Cir. 2003). If it is a willful  
23 violation, the Debtor is entitled to recover actual and punitive damages as sanctions  
24 under §362(k). Even if the defendant believes in good faith that it had a right to the  
25 property, this is not relevant to whether the act was willful. *Johnston Env'tl Corp. v.*  
26 *Knight (In re Goodman)*, 991 F.2d 613, 6018 (9th Cir. 1993).

1 Even though the defendants no longer have the property, §542 requires them to  
2 turn over the value of the property.

3 Perry then goes on to make a technical argument about whether the answers to  
4 the amended complaint were late and thus he would be entitled to judgment against the  
5 defendants. This also deals with whether the defendants are allowed to seek discovery.

6  
7 *[Note by the Court: I am not aware of any discovery pending at this time and thus there*  
8 *is no issue here to be dealt with. As to striking the answers, I do not believe that Mr.*  
9 *Perry's argument is well taken.]*

10 All reasonable inferences must be construed in the light most favorable to the  
11 plaintiff. Mere conclusions and unsupported factual allegations are insufficient to  
12 support a summary judgment motion.

13  
14 Chase has submitted a bogus title to the 2001 Nissan Pathfinder. Paper title was  
15 given by Chase to Perry. Chase violated TILA on April 2009 by failing to provide him  
16 with notice of the sale, transfer or assignment because they had surrendered title to him  
17 in August 2004 and thus they had no lien. In support of the motion for relief from stay  
18 [BK dkt. #15], they show a request for paper title and assert that electronic title was  
19 sufficient. However, Chase had assigned Perry title before 15 U.S.C. §1641(g) was  
20 enacted and thus an obligation existed for Chase to provide notice of title change to  
21 Perry and not just seek an Electronic Title.

22  
23  
24 **The Reply**

25  
26 This is not a reconsideration of the relief from stay motion and order. The value  
27 of the car to the bankruptcy estate is inconsequential and Perry does not address  
28 §542(a) as to this. Perry valued the car at \$9,000 and Chase states that he owed

1 \$8,100 on it.

2 As noted in *Fitch*, Chase had rights that were superior to Perry's right to  
3 possession and thus it was correct that Chase could keep the car pending the motion  
4 for relief from stay. Beyond that, Chase's possession of the car pending a ruling on the  
5 motion for relief from stay "constituted a maintaining and continuing perfection of  
6 CHASE's possessory lien rights under the contract" and that cannot be a violation of the  
7 automatic stay. 11 U.S.C. §362(b)(3); *Hayden v. Wells (in re Hayden)*, 308 B.R. 428  
8 (B.A.P. 9<sup>th</sup> Cir. 2004); *Boggan v. Hoff Ford (In re Boggan)*, 251 B.R. 95 (B.A.P. 9<sup>th</sup> Cir.  
9 2000).  
10

11 The cases cited by Perry are off point and distinguishable.  
12

13 The motion to strike Allsop's declaration is without merit. It is made with personal  
14 knowledge and also falls under the business records exception.

15 As to the Rewrite Agreement, Perry ratified it by making some payments in the  
16 lesser amount as set forth in that agreement. The Rewrite Agreement also keeps the  
17 terms of the contract in force, including the security interest in the car.  
18

19  
20 **The Surreply**

21 [Note by the Court: Because Mr. Perry is not represented by counsel, the Court  
22 allowed this surreply over the objection of Chase.]

23 Chase never sought adequate protection and thus waived the right to create a  
24 possessory lien. It is the responsibility of the possessor to seek a court order to keep  
25 the car – it is not the responsibility of the debtor to pursue the possessor. Chase only  
26 had a bogus electronic title – Perry had the paper title to the car.  
27

28 Since the violation of the stay was willful, Perry is entitled to sanctions. Once

1 Chase had knowledge of the bankruptcy, it was deemed to also have knowledge of the  
2 automatic stay. But Perry must prove by clear and convincing evidence that Chase  
3 violated the stay.

4 Chase held onto the car because it did not really have a lien and if it had turned it  
5 over, it would have lost that lien. Chase made the Bankruptcy Court assume that it had  
6 a lien when it didn't. Chase should have asked the Court for adequate protection and  
7 the reason that it didn't was because it didn't have a lien. *[Note by the Court: Mr. Perry*  
8 *then starts discussing the Trustee's right to sell property under §363, which is not*  
9 *relevant to this situation.]*

10 The automatic stay prohibits the creditor from retaining possession of  
11 repossessed property. And §542(a) applies to repossessed property as well as other  
12 property in the hands of a creditor.  
13  
14

## 15 **ANALYSIS AND HOLDINGS BY THE COURT**

### 16 **Standard for Granting Summary Judgment**

17 A motion for summary judgment is governed by Fed. R. Civ. P. 56 (incorporated  
18 in Fed. R. Bankr. P. 7056). Summary judgment is proper when the pleadings, discovery,  
19 and affidavits show that there is "no genuine dispute as to any material fact and that the  
20 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts  
21 are those which may affect the outcome of the proceedings. *Anderson v. Liberty Lobby,*  
22 *Inc.*, 477 U.S. 242, 248 (1986). The party moving for summary judgment bears the  
23 burden of identifying those portions of the pleadings, discovery, and affidavits that  
24 demonstrate the absence of a genuine issue of a material fact. *Celotex Corp. v. Catrett*,  
25 477 U.S. 317, 323 (1986).  
26  
27  
28

1 The moving party can carry its initial burden by showing that the opposing party  
2 lacks sufficient evidence on an essential element so that the movant would prevail at  
3 trial. Fed. R. Civ. P. 56(c)(1)(B). Once the moving party has borne this, it is up to the  
4 opposing party to demonstrate that a genuine dispute exists as to a material fact. The  
5 facts must be viewed in the light most favorable to the party opposing the motion.  
6 *Anderson*, 477 U.S. at 249; *Masson v. New Yorker Magazine*, 501 U.S. 496, 520  
7 (1991). However, mere allegations or denials do not defeat a moving party's allegations.  
8 *See Gasaway v. Northwestern Mut. Life Ins. Co.*, 26 F.3d 957, 960 (9th Cir. 1994).

10 Also the opposing party may not raise grounds that are not in issue under the  
11 pleadings. *Wasco Prods, Inc. v. Southwall Techs, Inc.*, 435 F.3d 989, 991 (9<sup>th</sup> Cir.  
12 2006).

14  
15 **Did Chase have a perfected lien interest in the Vehicle?**

16 Perry has argued repeatedly that Chase does not have an enforceable lien in the  
17 Vehicle, and thus the Court's relief from stay was based on Chase's "bogus" title to the  
18 Vehicle. In particular, Perry argues that Chase sent him the paper certificate of title, and  
19 thereby lost its title to the Vehicle. Chase argues that the paper title certificate merely  
20 released *Chase Auto's* ownership interest in the Vehicle. (Perry has submitted a copy of  
21 this paper title to the Court, but has not shown that he holds the original. What appears  
22 to be the back of this paper certificate of title does not have Chase, as the new  
23 lienholder, noted.) Thus, Perry argues this Court should reconsider the merits of the  
24 relief from stay order. While Perry is correct that Chase would not have been entitled to  
25 relief from the automatic stay if it did not have a valid lien on the Vehicle [see, e.g., *In re*  
26 *Ducommun*, 159 B.R. 919 (Bankr. D. Idaho 1993)], his argument fails for a number of  
27  
28

1 reasons.

2 Perry never raised the argument in opposition to Chase's motion for relief from  
3 stay. [BK dkt. 14, 19.] (He did cite the DMV Account View print out from February 13,  
4 2009, but used it to argue that Chase had violated the stay by ordering paper title.) By  
5 failing to raise this title argument at the time the relief from stay was litigated, Perry lost  
6 his opportunity to do so.

8 Even if Perry had made this argument in opposition to Chase's relief from stay  
9 motion, he would have lost. Chase undeniably had a lien on the Vehicle: Perry had  
10 granted a lien on the Vehicle to Chase under the Contract. That lien was enforceable  
11 against Perry irrespective of perfection.

13 An unperfected security interest is binding between the parties. The lack of  
14 perfection creates a problem only when an intervening third party obtains a  
15 perfected security interest that trumps the unperfected interest.

16 *Simon v. Chrysler Credit Corp. (In re Babaeian Transp. Co.)*, 206 B.R. 536, 540 (Bankr.  
17 C.D. Cal. 1997).

18 The title certificate and "Electronic Title Request" affect *perfection* of Chase's lien  
19 in the Vehicle. California law provides that a security interest in a vehicle is perfected by  
20 deposit (either physically or electronically) of certificate of title endorsed to show the  
21 secured party as legal owner of the vehicle. Cal. Veh. Code §6300, §6301.

23 It is not clear from the record before this Court whether Chase perfected its  
24 security interest in the Vehicle. If a properly endorsed certificate of title showing Chase  
25 as the legal owner was deposited with the DMV, then Chase's security interest was  
26 perfected. Chase has not put a record of depositing such a certificate into evidence. The  
27 DMV electronic record that has been submitted suggests that Chase deposited such an  
28 endorsed certificate, but that record has not been authenticated and thus is not

evidence.<sup>2</sup>

However, the issue of perfection is ultimately irrelevant. Had it not been perfected prior to bankruptcy, then Chase's lien could have been avoided by the Trustee pursuant to §544(a). *Babaeian Transp.*, 206 B.R. at 540 ("the trustee enjoys the status of a lien creditor, and thus his interest has priority over an unperfected security interest"). But the Trustee did not seek avoidance of Chase's lien under §544(a). And this avoidance power is exercisable only by the Trustee, not by Perry. *See Houston v. Eiler (In re Cohen)*, 305 B.R. 886 (9th Cir. BAP 2004); *In re Britt*, 385 B.R. 800 at \*7 (Table) (B.A.P. 9th Cir. 2007). In any event, the §546(a) limitations period for bringing an avoidance action expired two years after the petition date.

In sum, all that is necessary for this Court to conclude that Chase had a valid lien in the Vehicle is the Contract itself. That Contract granted Chase a security interest in the Vehicle enforceable against Perry. If Chase had failed to perfect that security interest, then the Trustee *could have* sought to avoid the lien, but the Trustee did not do so (and Perry cannot do so). In the absence of avoidance, any lack of perfection is irrelevant and the lien remained enforceable as to Perry.

### **Reconsideration of Stay Relief**

Perry has repeatedly asked the Court to reconsider the merits of its order granting Chase relief from the automatic stay to sell the Vehicle. It is not clear how the Court could even reconsider a six-year-old order or what would be the effect, if any, of overturning a stay relief order years after the relevant collateral has been sold. In any

---

<sup>2</sup> In their papers, both Perry and Chase make arguments based on the assumption that Chase's repossession of the Vehicle might perfect its security interest in the Vehicle. However, Cal. Veh. Code §6300 *et. seq.* provides the exclusive means of perfecting a security interest in a Vehicle under California law.



1 event, it should be noted that overturning the Court's order granting Chase relief from  
2 the automatic stay would not help Perry. Perry's failure to redeem the Vehicle 30 days  
3 after the first §341(a) meeting (which was on March 16, 2009), resulted in the automatic  
4 stay terminating with respect to the Vehicle on or about April 15, 2009 - pursuant to  
5 §362(h) and §521(a)(2). Section 521(a)(2) provides that:  
6

7 if an individual debtor's schedule of assets and liabilities includes debts which are  
secured by property of the estate--

8 **(A)** within thirty days after the date of the filing of a petition under chapter 7 of  
9 this title or on or before the date of the meeting of creditors, whichever is earlier,  
or within such additional time as the court, for cause, within such period fixes, file  
10 with the clerk a statement of his intention with respect to the retention or  
surrender of such property and, if applicable, specifying that such property is  
11 claimed as exempt, that the debtor intends to redeem such property, or that the  
debtor intends to reaffirm debts secured by such property; and

12 **(B)** within 30 days after the first date set for the meeting of creditors under  
13 section 341(a), or within such additional time as the court, for cause, within such  
30-day period fixes, perform his intention with respect to such property, as  
14 specified by subparagraph (A) of this paragraph;

15 except that nothing in subparagraphs (A) and (B) of this paragraph shall alter the  
16 debtor's or the trustee's rights with regard to such property under this title, except  
as provided in section 362(h);  
17

18 11 U.S.C. § 521(a)(2). Section 362(h) provides that the failure to either (i) file a timely  
19 notice of intention or (ii) timely take the action specified in that notice of intention results  
20 in the stay terminating with respect to such property. Perry filed a timely notice of  
21 intention to redeem the Vehicle – it was filed with his petition. But he failed to redeem  
22 the Vehicle within 30 days after the first scheduled §341(a) meeting (on March 16,  
23 2009): when Perry did not redeem the Vehicle by April 15, 2009, the automatic stay  
24 terminated under §521(a)(2)(B) and §362(h). The Vehicle was sold on April 30, 2009,  
25 so, whether Chase was relieved of the stay due to the granting of its motion for relief  
26 from the stay or whether the stay terminated due to Perry's failure to timely redeem the  
27 Vehicle, no stay existed at the time of sale. The issue that remains is whether Chase's  
28

ongoing possession of the Vehicle after the petition was filed was a violation of the stay.

**Violation of §362(a)(3)**

Section 362(a)(3) bars any “act ... to exercise control over the property of the estate,” as a violation of the automatic stay. 11 U.S.C. § 362(a)(3). The Ninth Circuit has held that knowing retention of estate property does violate §362(a)(3):

The “exercise control” clause of § 362(a)(3) was added by the Bankruptcy Amendments and Federal Judgeship Act of 1984. Pub. L. No. 98-353, 1984 U.S.C.C.A.N. (98 Stat.) Congress did not provide an explanation of that amendment. *In re Young*, 193 B.R. 620, 623 (Bankr.D.C.1996). The Ninth Circuit BAP has interpreted this amendment as broadening the scope of § 362(a)(3) to proscribe the mere knowing retention of estate property. *Abrams v. Southwest Leasing & Rental Inc. (In re Abrams)*, 127 B.R. 239, 241-43 (9th Cir. BAP 1991) (failure to return repossessed car after receiving notice of Chapter 7 filing constituted a violation of the automatic stay). In *dicta*, this circuit has accepted that interpretation. *Chugach*, 23 F.3d at 246. We now adopt the reasoning of *Abrams* and *Chugach*, and hold that the knowing retention of estate property violates the automatic stay of § 362(a)(3).

*California Emp. Dev. Dept. v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1151 (9<sup>th</sup> Cir. 1996). However, *direct* control over estate property is a prerequisite to a finding that §362(a)(3) has been violated. *Chugach Timber Corp. v. N. Stevedoring & Handling Corp. (In re Chugach Forest Products, Inc.)*, 23 F.3d 241, 244 (9<sup>th</sup> Cir. 1994).

In the case of *Farnsworth v. Castro (In re Castro)*, 2009 WL 7809012 (B.A.P. 9<sup>th</sup> Cir. 2009), the creditor repossessed two cars owned by the debtors. The day before the cars were to be auctioned, the debtors filed a voluntary chapter 7 petition. The creditor was made aware of the bankruptcy on the date of the petition filing. Thereafter, less than one week after the petition filing, debtors’ counsel demanded return of the vehicles and debtors filed their Schedules B and C. Creditor failed to return the vehicles to the debtors and debtors then filed an adversary proceeding against the creditor. The bankruptcy court ultimately ruled that creditor’s failure to return the vehicles to the

1 debtors within a reasonable time after the petition date constituted a willful violation of  
2 the stay. Creditor appealed the bankruptcy court's decision. On appeal, the 9<sup>th</sup> Circuit  
3 Bankruptcy Appellate Panel stated:

4           The fundamental underlying issue addressed in *Del Mission Ltd.* was  
5 whether the creditor exercised control over property of the estate by retaining  
6 possession of estate property. In *Del Mission Ltd.*, the Ninth Circuit clarified that  
7 to effectuate the purpose of the automatic stay, the "onus to return estate  
8 property is placed upon the possessor; it does not fall on the debtor to pursue the  
9 possessor." Thus, if Mr. Farnsworth wanted to retain possession of the vehicles  
after receiving notice of the Castros' bankruptcy filing, the burden was on him to  
file a motion for relief from the stay.

10 *Castro*, 2009 WL 7809012, at \*4.

11           While it is clear in *Castro* that the creditor had a duty to turn over the cars to the  
12 debtors, it is worthy to note that the Bankruptcy Appellate Panel included a "reasonable"  
13 element to the analysis, *i.e.*, that the creditor must return the property to the debtor  
14 within a reasonable time after notice of the bankruptcy filing. *Id.* at \*5-6.

15           What constitutes a reasonable period of time for turnover of estate property?  
16 There is no bright line rule which defines a reasonable period of time. Based upon a  
17 review of case law, it appears a reasonable length of time depends upon the facts of the  
18 case. *Gouveia v. IRS (In re Quality Health Care)*, 215 B.R. 543, 555 (Bankr. N.D. Ind.  
19 1997)(The "reasonable period of time" is unique to each case and must be determined  
20 on a case-by-case basis.)  
21

22           In *Castro*, the bankruptcy court established the date for a reasonable time to  
23 return the vehicles as the date the Castros claimed an exemption in the vehicles.<sup>3</sup> 2009  
24 WL 7809012, at \*6. In *In re Belcher*, 189 B.R. 16 (Bankr. S.D. Fla. 1995), the creditors  
25 retained possession of the vehicle for nine days after initial demand. The court found  
26  
27

28 <sup>3</sup> *Castro* was decided before the Ninth Circuit's decision in *Mwangi*. As discussed below, after *Mwangi*,  
the court would have had to conclude that the debtors lacked standing to assert a violation of the stay and  
thus would never have gotten to the question of what is a reasonable time.

1 that nine days exceeded a reasonable period of time and believed that four or five days  
2 was acceptable. Finally, in *Brooks v. World Omni (In re Brooks)*, 207 B.R. 738, 741  
3 (Bankr. N.D. Fla. 1997), the court found that five days exceeded a reasonable period of  
4 time and believed that three days was sufficient as the creditor had consulted with its  
5 attorney and knew the statutory requirements approximately three days after notice of  
6 the bankruptcy.  
7

8 Here, it is undisputed that Key repossessed the car on February 6, 2009. On  
9 February 11, 2009, Perry filed his chapter 7 bankruptcy case. Chase was listed on the  
10 creditor matrix and was given notice of the bankruptcy through the Bankruptcy Noticing  
11 Center. Perry also sent a notice of bankruptcy directly to Chase on February 12, 2009.  
12 No later than February 13, 2009, Chase became aware of the bankruptcy. But Chase  
13 failed to return the car. Chase waited until March 10, 2009, close to thirty days from  
14 receipt of the notice of the bankruptcy filing, before it filed a motion for relief from the  
15 automatic stay.  
16

17 The Court finds that it is at least probable that Chase violated the automatic stay  
18 under §362(a)(3). Chase had notice of the Perry bankruptcy no more than 48 hours  
19 after the petition filing; Chase had possession of the vehicle; and Chase never returned  
20 the car. Instead of promptly filing a motion for relief from the automatic stay upon notice  
21 of the bankruptcy filing, Chase dragged its feet - all the while still retaining full custody of  
22 the car. Moreover, Chase did not file its motion for relief from the automatic stay until  
23 close to thirty days after it received notice of the bankruptcy. As such, Chase's  
24 continued retention of the car for this length of time without filing a motion for relief from  
25 stay would be a violation of §362(a)(3) unless Chase can show that it was reasonable  
26 under the circumstances.  
27  
28

1 The record before the Court only demonstrates that Chase may have had  
2 communication delays between its various departments in seeking proof of title and  
3 copies of documents. There is no indication that Chase believed that Perry would be a  
4 flight risk once he obtained the car or that he would conceal it. There were only two  
5 payments in arrears. This was not a new car, had low value, and a relatively small  
6 amount was owed. Perry was a long-term customer as he had been in dealing with  
7 Chase for at least five years and apparently more. There is no indication that Chase  
8 was following advice of counsel as to delaying the turnover of the car.  
9

10 There were no discussions with the Debtor of possible adequate protection.  
11 Once the motion was prepared, there was no request for a hearing on shortened notice.  
12 The motion calendar held on April 9 was the first one at which the motion for relief from  
13 stay could be set on regular motion, but there were several calendar dates available in  
14 the interim for hearing on shortened notice and Chase did not seek to shorten notice.  
15  
16

### 17 **Standing**

#### 18 **Perry's Interest in the Vehicle Was Exempt**

19 Section 522(l) provides the mechanism for claiming an exemption:  
20

21 The debtor shall file a list of property that the debtor claims as exempt  
22 under subsection (b) of this section. If the debtor does not file such a list, a  
23 dependent of the debtor may file such a list, or may claim property as exempt  
24 from property of the estate on behalf of the debtor. Unless a party in interest  
objects, the property claimed as exempt on such list is exempt.

25 11 U.S.C. § 522(l). The Bankruptcy Rules further provide that: "A debtor shall list the  
26 property claimed as exempt under §522 of the Code on the schedule of assets required  
27 to be filed by Rule 1007." Fed. R. Bankr. P. 4003(a). Perry failed to list the Vehicle on  
28 Schedule C. Thus, he never formally claimed an exemption in the Vehicle.

1           However, Perry did file a statement of intent (Official Bankruptcy Form 8)  
2 indicating his intent to redeem the Vehicle and stating the Vehicle “is claimed as  
3 exempt.” This statement of Intent was filed with Perry’s chapter 7 petition, schedules,  
4 and statement of financial affairs.

5           A claim of exemption must enable trustees and creditors “to determine precisely  
6 whether a listed asset is validly exempt simply by reading a debtor’s schedules.” *Seror*  
7 *v. Kahan (In re Kahan)*, 28 F.3d 79, 82 (9th Cir.1994); *Hyman v. Plotkin (In re Hyman)*,  
8 967 F.2d 1316, 1319 n. 6 (9th Cir.1992); *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168  
9 (B.A.P. 9th Cir. 2001); *see also Schwab v. Reilly*, 560 U.S. 770, 791 (2010) (limiting  
10 exemptions to “those plainly expressed”); *Barroso-Herrans v. Lugo-Mender (In re*  
11 *Barroso-Herrans)*, 524 F.3d 341, 344 (1st Cir. 2008)(“To start, we ask how a reasonable  
12 trustee would have understood the filings under the circumstances.”)

13           Although ambiguities must be resolved against the Debtor, in this case it would  
14 have been clear to any reasonable trustee or creditor reading the petition package that  
15 Perry was claiming an exemption of his interest in the Vehicle. While Perry – a *pro se*  
16 debtor - failed to list the Vehicle on Schedule C, the attached Statement of Intention  
17 plainly stated that the Vehicle was being claimed as exempt. Furthermore, neither §522  
18 nor Rule 4003 require that a claim of exemption be made on Schedule C, merely that  
19 the Debtor file a list of assets claimed as exempt. (Rule 4003 further specifies that the  
20 list be in the schedules.) Finally, exemption laws “are to be construed liberally in favor of  
21 exemption.” *Lampe v. Williamson (In re Lampe)*, 331 F.3d 750, 754 (10th Cir. 2003).  
22 Thus, this Court concludes that Perry did claim an exemption in the Vehicle. The  
23 Trustee did not object to the exemption, which accordingly was perfected 30 days after  
24  
25  
26  
27  
28

1 the petition package was filed – on or about March 13, 2009.<sup>4</sup>

2  
3 Perry has no standing under §542(a)

4 However, Perry, as a chapter 7 debtor, lacks standing to bring an action under  
5 §542(a). Section 542(a) provides that:

6  
7 Except as provided in subsection (c) or (d) of this section, an entity, other than a  
8 custodian, in possession, custody, or control, during the case, of property that the  
9 trustee may use, sell, or lease under section 363 of this title, or that the debtor  
10 may exempt under section 522 of this title, shall deliver to the trustee, and  
account for, such property or the value of such property, unless such property is  
of inconsequential value or benefit to the estate.

11 11 U.S.C. §542(a). The references to property the debtor “may exempt” or “of  
12 inconsequential value . . . to the estate,” are puzzling in the context of this case, where it  
13 is the chapter 7 debtor who is seeking turnover from a creditor. They do make sense in  
14 the context where §542(a) is more typically used in chapter 7 – a chapter 7 trustee  
15 seeking turnover of non-exempt property from the debtor. See, e.g., *In re Burgio*, 441  
16 B.R. 218, 220 (Bankr. W.D.N.Y. 2010).

17  
18 Accordingly, some courts have held that a chapter 7 debtor cannot seek turnover  
19 under §542(a). See, e.g., *Titan Real Estate Ventures v. MJCC Realty Ltd. P’ship (In re*  
20 *Flanagan)*, 415 B.R. 29, 36 (D. Conn. 2009); *Caffey v. Jag Autocare (In re Caffey)*, 2014  
21 WL 3888318, at \*4 (Bankr. N.D. Ohio Aug. 8, 2014). Other courts have allowed chapter  
22 7 debtors to compel turnover from creditors under §542(a). See, e.g., *In re Velichko*,  
23 473 B.R. 64, 68 (Bankr. S.D.N.Y. 2012).

24 The Ninth Circuit Bankruptcy Appellate Panel recently held that chapter 7 debtors  
25

26  
27 <sup>4</sup> Although “[a] debtor may not claim an exemption in property that is wholly encumbered by a consensual  
28 lien” [*Labostrie v. L.A. Fin. Credit Union (In re Labostrie)*, 2012 WL 6554727, at \*4 (B.A.P. 9th Cir. Dec.  
14, 2012), citing *Owen v. Owen*, 500 U.S. 305, 308 (1991)], Perry did have a small amount of equity in  
the Vehicle. Chase’s payment history shows about \$8,100 owing on the Vehicle. [Exhibit 4 to Allsop  
Dec., dkt. 292-1.] In his schedules, Perry claims the value of the Vehicle was \$8,900-9,000. [BK dkt. 1.]

1 lack standing under §542(a). *Collect Access v. Hernandez (In re Hernandez)*, 483 B.R.  
2 713, 725 (B.A.P. 9th Cir. 2012). However, the B.A.P. nonetheless did allow the chapter  
3 7 debtors to recover damages against creditors refusing to turnover property to the  
4 debtor – as a violation of §362(a)(3), which bars any “act ... to exercise control over the  
5 property of the estate.” *Hernandez*, 483 B.R. at 726; *see also Castro*, 2009 WL  
6 7809012, at \*4-5.

8  
9 Perry lacks standing under §362(a)(3)

10 Thus, until last year, the Court would have concluded that Perry had standing to  
11 bring an action against Chase for violation of §362(a)(3). However, the Ninth Circuit  
12 recently concluded that §362(a)(3) does not protect property of the *debtor* (as opposed  
13 to property of the estate):  
14

15 In this case, we must decide whether the Debtors can state a claim for a willful  
16 violation of 11 U.S.C. § 362(a)(3)—which proscribes “any act to obtain  
17 possession of property of the estate or of property from the estate or to exercise  
18 control over property of the estate”—based on the operation of Wells Fargo's  
19 administrative pledge. We hold that they cannot state such a claim. Before the  
20 account funds revested in the Debtors, they remained estate property, and the  
21 Debtors had no right to possess or control them. Accordingly, the operation of the  
22 administrative pledge could cause the Debtors no injury before the account funds  
23 revested. After the account funds revested in the Debtors, they lost their status  
24 as estate property and thus were no longer subject to § 362(a)(3).

25 *Mwangi v. Wells Fargo Bank (In re Mwangi)*, 764 F.3d 1168, 1170-71 (9th Cir. 2014).

26 *Mwangi* truly leaves the chapter 7 debtor's interests in assets unprotected by  
27 §362(a)(3). If a creditor fails to turn over the debtor's property, the debtor cannot bring  
28 actions under §362(a)(3) prior to the debtor's exemption in the assets being perfected,  
because such actions may only be brought by the trustee. After the exemption revests  
the property in the debtor, the debtor cannot bring a §362(a)(3) action because the  
asset is then no longer property of the estate.



1 The facts and the analysis in this case are slightly different than *Mwangi*,  
2 although Perry still lacks standing under §362(a)(3). *Mwangi* distinguished between the  
3 deposit accounts in that case, which were themselves exempt, and property such as the  
4 Vehicle, in which the debtor's "interest" in the asset was exempt under the state  
5 exemption law. In the former case, the asset reverts in the debtor as soon as the 30-  
6 day period for objecting to exemptions has passed without objection; in the latter case  
7 (under *Schwab v. Reilly*, 560 U.S. 770 (2010), and *Gebhart v. Gaughan (In re Gebhart)*,  
8 621 F.3d 1206 (9th Cir. 2010)) the asset remains estate property until it is administered  
9 or abandoned, or the case is closed.  
10

11 Thus, in this case, because the Vehicle remained in the estate and only an  
12 interest reverted in Perry, the Vehicle remained protected by §362(a)(3) even after  
13 Perry's exemption vested. However, with only an interest in the Vehicle exempted,  
14 Perry continued to lack the right to possess or control the Vehicle. See, e.g., *Zavala v.*  
15 *Wells Fargo Bank (In re Zavala)*, 444 B.R. 181, 189 (Bankr. E.D. Cal. 2011); see also  
16 *Schwab v. Reilly*, 560 U.S. 770, 792 (2010) ("title to the asset will remain with the estate  
17 pursuant to § 541, and the debtor will be guaranteed a payment in the dollar amount of  
18 the exemption"). It is the right to possess or control that gives the right to assert  
19 damages under §362(a)(3). *Mwangi*, 764 F.3d at 1177. So Perry never obtained the  
20 right to assert damages for a violation of §362(a)(3).  
21

22 Applying *Mwangi* to these facts appears inequitable, to this Court at least.  
23 *Mwangi* involved the right to money, which will almost always be administered by the  
24 chapter 7 trustee and which is subject to an extreme risk of dissipation in the debtor's  
25 hands. On the other hand, a debtor may use a "hard" asset like a car without inevitably  
26 destroying value and such use may be integral to the debtor's continued employment.  
27  
28

1 Unlike money, a car typically remains in the chapter 7 debtor's possession and is almost  
2 never administered by the trustee:

3 In the typical consumer chapter 7 case, few, if any, objections are filed to claimed  
4 exemptions, and it is virtually unheard of for trustees to object to debtors'  
5 statutory exemption claims in automobiles. As the bankruptcy court noted, "I've  
6 been doing this for over 20 years, and I can count on one hand the number of  
7 times a trustee in bankruptcy has administered a vehicle." Transcript of the Trial  
8 of the Adversary Proceeding, at 227.

9 *Castro*, 2009 WL 7809012, at \*8. Thus, requiring a chapter 7 debtor to have a  
10 perfected exemption in a vehicle in order to assert a right to damages is inconsistent  
11 with both existing practice and the rationale of *Mwangi*. This requirement will simply  
12 enable creditors to delay return of vehicles – vehicles which are typically essential to the  
13 debtor – without any benefit to the estate.

14 Holding that the Debtor's exempt property – once revested in the Debtor - is not  
15 protected by §362(a)(3) simply gives creditors free rein to take and seize the debtor's  
16 property, which is deeply inconsistent with bankruptcy policy and practice. *Mwangi*  
17 states that debtors could sue for breach of contract to recover exempt property seized  
18 by a creditor. This, of course, places the burden of action on the debtor and will cause  
19 substantial delay in return of the assets, certainly impairing the debtor's fresh start.<sup>5</sup>

20 Nonetheless, this Court is bound by *Mwangi* and thus must hold that Perry lacks  
21 standing to bring an action under §362(a)(3) against Chase for retaining the Vehicle.  
22 The Court is frustrated by this conclusion, because Chase probably violated §362(a)(3),  
23 and did so to an individual who had been paying on this Vehicle for approximately eight  
24 years, was a long-standing customer of Chase, was only two payments behind, and had  
25

26  
27 <sup>5</sup> In fact, Perry did bring an action in state court [Los Angeles County Superior Court, case # PC044679]  
28 seeking damages for wrongful repossession of the Vehicle under six causes of action, including breach of  
contract. This state court action was ultimately dismissed for Perry's failure to post a bond after being  
deemed a vexatious litigant. The details of this state court action are discussed in this Court's  
Memorandum of Opinion on Central Issues [Dkt. 122] at 2:15-4:8.

1 been subjected to previous accounting errors by Chase.

2 As noted above, Chase's delays would have created a triable issue of fact. The  
3 Court has considered encouraging Perry to appeal this ruling on the (somewhat slim)  
4 possibility that the Ninth Circuit might limit *Mwangi* and not apply it to this context. (Due  
5 to Perry's numerous prior appeals, which were all either dismissed or ended in a ruling  
6 against Perry, this Court has suggested to the appellate courts that Perry be declared a  
7 vexatious litigant. However, this appeal would differ as it falls under urging a change in  
8 the law.) The Court is reluctant to do so, because even if Perry were able to recover for  
9 a violation of §362(a)(3), the actual damages awarded for such a violation are generally  
10 quite low. See, e.g., *TranSouth Fin. Corp. v. Sharon (In re Sharon)*, 234 B.R. 676, 687  
11 (B.A.P. 6th Cir. 1999)(attorney's fees of \$2,122.50); *Stephens v. Guaranteed Auto (In re*  
12 *Stephens)*, 495 B.R. 608, 615 (Bankr. N.D. Ga. 2013)(actual damages of \$1,559 and  
13 attorney's fees of \$4,325); *Mitchell v. BankIllinois*, 316 B.R. 891, 904 (S.D. Tex. 2004)  
14 (\$8,520.97 in actual damages, including attorney's fees, plus appellate attorney fees  
15 and costs); *Will v. Ford Motor Credit Corp. (In re Will)*, 303 B.R. 357, 369 (Bankr. N.D.  
16 Ill. 2003)(\$524 in compensatory damages for cabs, buses and lost personal property in  
17 car, plus costs and attorney's fees); *In re Cepero*, 226 B.R. 595, 601 (Bankr. S.D. Ohio  
18 1998)(actual damages of \$1,832.40); *In re Zaber*, 223 B.R. 102 (Bankr. N.D. Tex.  
19 2003)(\$180 in car rental and \$1,400 of reasonable attorney's fees).<sup>6</sup>

20 Punitive damages, typically relatively modest in amount, have been awarded, but  
21 only for egregious violations. *Stephens*, 495 B.R. 608 (\$17,890 in punitive damages  
22 where creditor sold car without seeking relief from the stay); *Will*, 303 B.R. 357 (\$2,000  
23 in punitive damages); *Cepero*, 226 B.R. at 601 (\$12,000 in punitives for egregious

24  
25  
26  
27  
28  

---

<sup>6</sup> Perry would have no claim to attorney's fees as he has represented himself throughout these proceedings.

1 violation – post-petition sale of vehicle despite numerous notices of bankruptcy).

2 Finally, in *Castro* the Ninth Circuit B.A.P. held that a chapter 7 debtor is not  
3 entitled to stay violation damages arising during the period prior to the exemption being  
4 perfected and the right to possess the asset revesting in the chapter 7 debtor. 2009 WL  
5 7809012, at \*9. Thus, Perry would not be entitled to any damages relating to at least the  
6 first 30 days of this case. For these reasons, even a successful appeal may not yield a  
7 monetarily meaningful recovery.  
8

9  
10 **CONCLUSION**  
11

12 As set forth above, Perry lacks the standing to bring an action for damages for  
13 Chase's (probable) violation of §362(a)(3) and §542(a). Summary judgment will be  
14 granted in full to Chase.

15 ###  
16  
17  
18  
19  
20  
21  
22

23  
24 Date: November 13, 2015



25 Geraldine Mund  
26 United States Bankruptcy Judge  
27  
28

DATE	DESCRIPTION	JUDICIAL NOTICE	PERRY DOCUMENTS	CHASE DOCUMENTS	COURT NOTES/COMMENTS	PERRY COMMENTS	CHASE COMMENTS
		# refers to bankruptcy case unless otherwise noted	# refers to this adversary case unless otherwise noted				
1/10/2002	Letter from Chase that check of \$457.99 received and applied on 11/26/01		#305, exhibits p. 34				
12/2/2002	Letter from Marcus Bastida to Chase demanding acknowledgment that Perry has been timely on all payments		#305, exhibits p. 25				
1/10/2003	Letter from Chase agreeing that there was an error in applying the payment received on 7/26/01 and that is being corrected		#305, exhibits p. 27, 33				
1/30/2003	Letter from Marcus Bastida to Chase demanding acknowledgment that Perry has been timely on all payments		#305, exhibits p. 26		same letter as that of 12/2/02, but to a different address		
7/15/2004	Letter from Chase that they have notified the credit reporting agencies that the account was paid in full with a zero balance and not deficiencies. They waived all late fees.		#305, exhibits p. 28		acct. 4 3200 35175		the account # refers to the prior lease and not the note that was the subject of the RFS order
8/7/2004	Promissory Note and Security Agreement		#305, exhibits p. 15	#292, ex. 1			
8/18/2004	Pink slip transferring title to Perry		#305, ex. 1		shows Chase as registered owner	does not show Chase lien	this dealt with the lease and not the new agreement in which Perry financed his purchase and became the registered owner and Chase the lienholder.
8/19/2004	Chase application to DMV for release of interest in vehicle		#305, ex. 1		says certificate of title was lost. Dated 8/19/04, but notarized on 2/22/05		
8/19/2004	DMV vehicle transfer and reassignment form showing sold to Perry		#305, ex. 1		Form instructions attached		
2/9/2005	Letter from Chase sending copy of note, security agreement, purchase transfer agreement and odometer statement that Perry signed to pay off lease. \$250 in late fees waived. Looking for where 6/5/04		#305, exhibits p. 32		acct. 4 3200 35175. Perry took new loan to pay off lease and keep car		
12/12/2005	Chase Simple Interest Extension Agreement		#305, exhibits p. 24				
4/1/2007	Chase Master Services Agreement with Countrywide Asset and Auto Recovery, L.P		#305, exhibits p. 96				
4/6/2007	Letter from Chase that \$100 late fee removed from his account		#305, exhibits p. 30		acct. 104 231 11 0034 57		
12/10/2007	Chase Simple Interest Extension Agreement		15-01129, ex. 59				
2/4/2008	Key Certificate of Liability Insurance		#305, exhibits p. 120				
5/16/2008	Account Rewrite Agreement		#305, exhibits p. 21	#292, ex. 3	sent by Chase and notes that Perry orally agreed to it. Sets a revised payment schedule of \$381.52 for 5/10/08 and \$252.08 startnig on 6/10/08		
12/1/2008	Bank of America transaction detail - check to Chase for \$252.08		#305 exhibits p. 19				
12/10/2008	Letter from Perry to Chase that Lathrup is his attorney, only some late fees have been removed, and two payments are in dispute		#305, exhibits p. 35		"I have been paying the car for nine years. I think I owe \$6500 on the car. I intend to pay the rest, maybe in bigger chunks in a few months and finish this mistreatment by your collection department." Also lady in collection department told him they would not take his car and she would call back in an hour, but she never called back.		
12/15/2008	Letter from Perry to Chase detailing problems		#305, exhibits p. 37		content is virtually identical to letter of 12/20/08		

DATE	DESCRIPTION	JUDICIAL NOTICE	PERRY DOCUMENTS	CHASE DOCUMENTS	COURT NOTES/COMMENTS	PERRY COMMENTS	CHASE COMMENTS
1/9/2009	Bank of America transaction detail - check to Chase for \$252.08		#305 exhibits p. 20				
1/30/2009	Key Order to Repossess on behalf of Chase Auto Finance		#305, exhibits p. 94		shows balance on acct of \$8819.37, past due of \$756.24, monthly payments of \$252/08 and delinquent since Nov. 10, 08		
2/2/2009	Perry to Attorney Mary Ann Foran that Chase has not sent rewrite contract agreed to 7 months ago and may not have been crediting the three payments that he made.		#305, exhibits p. 29				
2/5/2009	Letter from J. Martin Lathrop to Chase re: notice of dispute as to what is owing		#305, exhibits p. 22				letter is dated 2/5/09, but the fax dateline is 2/18/09
2/5/2009	<i>Key repossesses the car (in the late evening or early in the morning of 2/6/09)</i>		#305, exhibits p. 39				
2/11/2009	Perry files bankruptcy. Chase listed on creditor matrix at 900 Stewart Ave. FL 3, Garden City, NY 11530 & P.O. Box 981439, El Paso, TX 79998	bk #1					
2/11/2009	Notice of Intent to Dispose of Repossessed Vehicle		15-01129, ex. 29		Perry wrote that he was not served with this. Shows amount to reinstate of \$2,034.12; remaining contract balance of \$8,251.06, total redemption of \$9,276.86. May have been in the same mailing as the Notice of Our Plan to Sell Property (item 29)		
2/11/2009	Perry files his schedules, noting the 2001 Nissan Pathfinder, claiming its value as \$9,000, and showing a disputed secured claim in that amount. No exemptions claimed.	bk #1					
	event #27 deleted						
	event #28 deleted						
2/11/2009	Chase gives Perry notice of it plan to sell the car at private sale sometime after 3/5/09		15-01129, ex. 29		May have been in the same mailing as the Notice of Intent to Dispose of Repossessed Vehicle (item 25)	Perry assert that he did not receive this prior to the state court action	
2/12/2009	Letter or fax to Key Auto Recovery from Perry detailing the repossession and threatening criminal penalties		#305, exhibits p. 39				
2/12/2009	Perry sends notice of bankruptcy to Chase		15-01129, ex. 28-2				
2/12/2009	Court electronically serves notice of bankruptcy on Chase at PO Box 981439, El Paso, TX 79998-1439	bk #7	15-01129, ex. 28-3		The notice dated 2/11/09 and on the bankruptcy case docket as #7 was mailed by BNC on 2/12/09		
2/13/2009	Electronic Title Notice		#305, ex. 2	#292, ex. 2	Electronic Lien and Title Program description attached to Perry ex. 2		
2/13/2009	Chase places bankruptcy hold on the account		15-01129, ex. 39				
2/17/2009	Perry files a complaint against Chase in LA Superior Court						
2/23/2009	Chase writes in its written notes that Perry filed bankruptcy		#305, p. 91				
2/24/2009	Chase searching for title to car		15-01129, ex. 43				
2/25/2009	Perry filed opposition to Chase motion to lift stay and seeks a preliminary injunction	bk #14			no motion for RFS has been filed		
2/25/2009	Chase looking for copies of contract, etc.		15-01129, ex. 44-45		Chase notes that Perry is in chapter 7	Chase notes that it is unable to locate a copy of the title	
3/9/2009	Perry files motion for OSC against Key and Chase for contempt for violating the stay	bk #17					
3/10/2009	Chase motion for RFS	bk #15					
3/20/2009	payment history			#292, ex. 4			
3/23/2009	Chase files opposition to motion for OSC	bk #18			filed again on 3/30, #23		
3/23/2009	Perry filed "additional opposition" to Chase motion for relief from stay	bk #19					
3/30/2009	Reply to Debtor's Opposition to Motion for Relief from Automatic Stay	bk #22			Perry points out that it says that CA is a paperless title state and so Chase did not need a paper title until 2/10/09		

DATE	DESCRIPTION	JUDICIAL NOTICE	PERRY DOCUMENTS	CHASE DOCUMENTS	COURT NOTES/COMMENTS	PERRY COMMENTS	CHASE COMMENTS
4/1/2009	Perry files reply to Court's 3/24/09 tentative ruling and additional opposition to Chase's opposition to the motion for OSC	bk #24					
4/9/2009	hearing on Perry's motion for OSC and injunction						
4/9/2009	hearing on Chase motion for RFS						
4/14/2009	Perry filed motion to reconsider on his motion for OSC	bk #25					
4/14/2009	Perry files appeal of the Order granting relief from stay	bk #26					
4/21/2009	Court denies motion to reconsider declining OSC	bk #28			Order abstaining from OSC as to sanctions not on the docket		
4/23/2009	Order granting RFS	bk #29					
4/29/2009	Perry files objection to Chase proposed order for RFS	bk #41					
4/30/2009	Chase sells the car			#292, dec. of Jeff Allsop			
5/1/2009	Court denies Perry motion for stay pending appeal	bk #36					
5/9/2009	Chase View Activity from 4/17/08-3/20/09		#305, exhibits p. 80				
2/5/2010	Perry files adversary proceeding	10-01043					
3/13/2012	9th Circuit affirms abstention as to sanctions, etc.	09-60052					
3/13/2012	9th Circuit affirms appeal from RFS order is moot	09-60052					